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February 20, 2013

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Patricia S.

You are hereby notified that the Court has entered the following opinion and order:

2012AP2628-NM	In re the termination of parental rights to Richard G., a person under the age of 18: State of Wisconsin v. Patricia S. (L.C. #2010TP148)
2012AP2629-NM	In re the termination of parental rights to Patrick W., a person under the age of 18: State of Wisconsin v. Patricia S. (L.C. #2010TP149)
2012AP2630-NM	In re the termination of parental rights to Marlana M., a person under the age of 18: State of Wisconsin v. Patricia S. (L.C. #2010TP150)

Before Neubauer, P.J.¹

Patricia S. appeals from orders terminating her parental rights to her three children, Richard G., Patrick W., and Marlena M. Patricia's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and 809.32. Patricia was served with a copy of the report and advised of her right to file a response. No response has been received from Patricia. Patricia's guardian ad litem² filed a letter indicating that her appointment was continued for purposes of appeal, that she concurs with the issues and discussion set forth in the no-merit report, and that finality in these cases is in Patricia's best interest. Based upon an independent review of the report and records, this court concludes that no issue of arguable merit could be raised on appeal and affirms the orders.

After the filing of a petition for termination of parental rights and the completion of preliminary matters, a contested termination proceeding involves a two-step procedure. *Sheboygan Cnty. DHSS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. The first step is a fact-finding hearing, which determines whether grounds exist to terminate the parent's rights. *Id.* Grounds for termination must be proven by clear and convincing evidence. *Ann M.M. v. Rob S.*, 176 Wis. 2d 673, 682, 500 N.W.2d 649 (1993); *see also* WIS. STAT. §§ 48.424(2), 48.31(1). If grounds for termination are found to exist, the circuit court must find that the parent is unfit. *Julie A.B.*, 255 Wis. 2d 170, ¶26. The court then proceeds to the second

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² At the start of the termination proceedings, Patricia was found not competent and a guardian ad litem was appointed to assist her in understanding the proceedings and communicating with advocacy counsel. *See* WIS. STAT. § 48.235(1)(g).

phase, which is the dispositional hearing. *Id.*, ¶28. The court must then determine whether the parent's rights should be terminated. *Id.* The best interest of the child is the prevailing factor considered by the trial court in making this decision. WIS. STAT. § 48.426(2). In determining the best interests of the children, the circuit court is required to consider the agency report and the factors enumerated in § 48.426(3). *Julie A.B.*, 255 Wis. 2d 170, ¶4. It is also entitled to consider other factors, including factors favorable to the parent. *Id.*

Patricia's three children were removed from her home and care in May 2003, when they were five years, three years, and seventeen months old. The petitions to terminate Patricia's parental rights were filed in May 2010 and alleged that the children remained in continuing need of protection and services (CHIPS) because Patricia failed to meet conditions established for return of the children to her home and was unlikely to meet those conditions in the next nine months. *See* WIS. STAT. § 48.415(2). Specifically, the petitions set forth that Patricia had maintained contact and visitation with the children, but because of cognitive delays, she was unable to manage the children's behavior and needs, unable to exercise unsupervised or extended visitation, and unable to provide a suitable home.

The cases were tried over four days to the circuit court along with the petition to terminate the parental rights of Richard G.'s father.³ Although the court found that Patricia had put great effort into trying to meet the conditions for return of the children and deeply loved her children, the court determined that the children were continuing CHIPS and that Patricia would be unable to meet the conditions for return in the next nine months. At the dispositional hearing,

³ The father of Patrick W. is deceased. A default judgment was entered against the father of Marlena M.

the court determined that the termination of Patricia's parental rights was in the children's best interests.

Counsel's no-merit report addresses as potential appellate issues whether Patricia's waiver of her right to a jury trial was invalid, whether the evidence was insufficient to support the circuit court's determination that grounds for termination existed, whether Patricia was denied the right to the effective assistance of counsel, and whether the dispositional decision was an erroneous exercise of discretion or otherwise failed to consider the best interests of the children. Our review of the record confirms counsel's conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate description of the evidence, the trial procedure, and reasons supporting the court's exercise of discretion to support the no-merit conclusion. We need not address the potential claims further for to do so would only repeat that which is set forth in the no-merit report.

We note that time limits set forth in WIS. STAT. ch. 48 for termination proceedings were not met. However, continuances "upon a showing of good cause in open court" are allowed. WIS. STAT. § 48.315(2). Failure to object to a continuance waives any challenge to the court's competency to act during the continuance. Sec. 48.315(3). Each time a hearing was continued or set beyond the statutory time limit, the circuit court found cause to extend the time limit and no objection was made. There is no arguable merit to any claim related to the failure to comply with the statutory time limits.

Our review of the records discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the orders terminating Patricia's parental rights, and discharge appellate counsel of the obligation to represent Patricia further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Patricia S. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals